

1 LESLEY ANNE HAWES (117101)
2 DIAMOND McCARTHY LLP
3 150 California Street, Suite 2200
4 San Francisco, CA 94111
5 Phone: (415) 692-5200
6 Email: lhawes@diamondmccarthy.com

7 Counsel for Receiver, Kathy Bazoian Phelps

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE
RIVER ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
BIVONA; CLEAR SAILING
GROUP IV LLC; CLEAR SAILING
GROUP V LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

**THIRD INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESSION RECEIVER AND COUNSEL
FROM JULY 1, 2019 THROUGH
SEPTEMBER 30, 2019; FOR THE
APPROVAL OF FEES FOR SHERWOOD
PARTNERS, INC. FROM APRIL 1, 2019
THROUGH JUNE 30, 2019; AND FOR THE
APPROVAL OF FEES FOR GROBSTEIN
TEEPLE, LLC FROM MARCH 8, 2019
THROUGH SEPTEMBER 30, 2019**

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

I. Relief Requested

On or about October 11, 2016, Sherwood Partners, Inc. ("Sherwood") was appointed receiver over the corporate defendant entities and their affiliates (Dkt. No. 141). On February 28, 2019, the Court entered its Revised Order Appointing Receiver (Dkt. No. 469) and appointed Kathy Bazoian Phelps as the replacement receiver ("Receiver"). On March 18, 2019, the Receiver filed an

1 administrative motion for an order approving the employment of Diamond McCarthy LLP
 2 (“Diamond McCarthy”) to serve as general counsel to the Receiver effective as of February 1, 2019
 3 and Grobstein Teeple, LLC (“Grobstein Teeple”) as her accountants (Dkt. No. 471-472, 474), which
 4 was approved by the Court on March 20, 2019 (Dkt. No.476).

5 Pursuant to Local Rule 7-11, the Receiver seeks approval of compensation in the amount of
 6 \$40,349.40¹ for services rendered from July 1, 2019 through September 30, 2019, and reimbursement
 7 of expenses in the amount of \$542.73. Diamond McCarthy seeks compensation in the amount of
 8 \$4,450.90² for services rendered from July 1, 2019 through September 30, 2019, and reimbursement
 9 of expenses in the amount of \$131.35. Sherwood seeks compensation in the amount of \$5,280.50 for
 10 the period of April 1, 2019 through June 30, 2019. Grobstein Teeple seeks compensation in the
 11 amount of \$3,540.50 for the period of March 8, 2019 through September 30, 2019. This motion is
 12 supported by the Declaration of the Receiver, the Declaration of Lesley Anne Hawes of Diamond
 13 McCarthy, and the Declaration of Howard B. Grobstein of Grobstein Teeple.

14 The Receiver has conferred with counsel for the Securities and Exchange Commission
 15 (“SEC”), and for the SRA Funds Investor Group (“Investor Group”), and is advised that they do not
 16 oppose the Motion. A stipulation with all parties was deemed impractical given, among other things,
 17 the entry of judgment against defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-
 18 11(a)).

19 **II. Previous Fee Motions**

20 This is the third interim fee motion by the Receiver and her counsel. On June 6, 2019, the
 21 Court entered an order approving fees to the Receiver in the amount of \$46,287.00 and reimbursement
 22 of costs in the amount of \$3,030.33, and similarly granted Diamond McCarthy’s requested fees in the
 23 amount of \$16,802.80 and costs in the amount of \$524.67 for services rendered from the inception of
 24 the Receiver’s activities through March 31, 2019 (20% of the fees were held back until further order of
 25 the Court) (Dkt. 485). On August 13, 2019, the Court entered an order approving the Receiver and her

26 _____
 27 ¹ The Receiver has agreed to a holdback of 20% of this amount, and thus seeks payment of
 \$32,279.52 at this time.

28 ² Diamond McCarthy has agreed to a holdback of 20% of this amount, and thus seeks payment of
 \$3,560.72 at this time.

1 counsel's second interim fee motion (Dkt. No. 515) for services rendered from April 1, 2019 through
2 June 30, 2019. The Court awarded the Receiver fees in the amount of \$85,735.50 and reimbursement
3 of expenses in the amount of \$185.93 and awarded Diamond McCarthy fees in the amount of
4 \$30,625.00 and reimbursement of expenses in the amount of \$1,924.16 (fees were subject to 20% hold
5 back). The Receiver has paid the amounts authorized for payment, net of the holdbacks.

6 **III. Case Status**

7 With the assistance of counsel, the Receiver has made significant progress in moving the
8 case forward. With respect to claims against the estate, the Receiver has settled disputes with the
9 unsecured creditor Pradeep Sindhu. The stipulation was approved by the Court on July 30, 2019
10 (Dkt. No. 510). The Receiver has also engaged in discussions with Fortuna Funds to resolve issues
11 related to its claim. There may be a few lingering objections to claims relating to guaranty claims,
12 but otherwise the claims administration has largely been completed.

13 During July through September 2019, the Receiver engaged in detailed discussions with
14 Equity Acquisition Corporation ("EAC") regarding the resolution of all outstanding issues between
15 the receivership estate and EAC. The Receiver has reached a tentative settlement with EAC and
16 the parties are in the process of documenting the settlement. While the Receiver initially
17 communicated with Ben Sabrin regarding shares of MongoDB that are owed to the estate, Mr.
18 Sabrin has ceased communicating with the Receiver, and the Receiver is anticipating preparing a
19 complaint against Mr. Sabrin.

20 The Receiver's proposed Plan of Distribution ("Plan") was heard by the Court on June 27,
21 2019 (Dkt. No. 487). At the hearing, the Investor Group requested, and the Court and the Receiver
22 agreed, that the Receiver would obtain a tax opinion regarding certain aspects of the Receiver's
23 proposed tax treatment of the Plan. The Receiver prepared and filed her motion to (1) employ
24 Miller Kaplan as tax advisor; (2) employ Schinner & Shain LLP as securities counsel; and (3) for
25 instructions from the Court on approaches to addressing tax issues.

26 The receivership estate presently has \$40,677.14 in cash on hand in a checking account,
27 \$207,761.66 in money market account and \$502,163.22 in the segregated Anna Bivona funds.
28

There are known accrued expenses and unpaid expenses of \$64,339.38³ and holdbacks of \$180,517.57. Attached to the Declaration of the Receiver as Exhibit “F” is a financial summary showing the cash status of the estate as of September 30, 2019. Funds in the amount of \$176,214.87 representing first and second quarter fees and expenses have been disbursed during this period.

IV. The Receiver’s Fee Request

As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has established separate billing categories for services provided to address legal issues (2598-11- Case Administration; 2598-13 – Claims Administration/Objection; 2598-14 - Asset Analysis and Recovery; 2598-16- Plan Implementation) and a separate category for administrative services provided (2598-12- Receiver Administrative Services). For billing category 2598-12, the Receiver has agreed to charge \$130.00 per hour for herself and for administrative assistance. For the rest of the billing categories, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby generating significant savings to the estate. The billing statements itemizing the services provided and expenses incurred are contained in Exhibits A-E attached to the Declaration of the Receiver. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	22.20	9,435.00	542.73
Administrative Services	16.70	2,171.00	n/a
Claims Administration/Objection	10.30	4,377.50	n/a
Asset Analysis and Recovery	24.50	10,412.50	n/a
Plan Implementation	35.30	13,953.40	n/a
TOTAL		\$40,349.40	\$542.73

V. Diamond McCarthy’s Fee Request

As detailed in the Declaration of Lesley Anne Hawes, Diamond McCarthy has established the following billing categories for tasks performed from July 1, 2019 through September 30, 2019

³ This sum includes a \$10,000 retainer paid in October 2019 to Schinner & Shain.

(2622-11- Case Administration; 2622-13- Plan Implementation; 2622-15 Asset Analysis and Recovery). Services were primarily performed by partners Ms. Hawes and Sheryl Guigliano at a discounted hourly rate of \$425.00 with paralegal assistance. The billing statements itemizing the services provided and expenses incurred are attached as Exhibits A-C to the Declaration of Ms. Hawes. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	3.60	1,305.90	131.35
Plan Implementation	6.70	2,847.50	n/a
Asset Analysis and Recovery	0.70	297.50	n/a
TOTAL		\$4,450.90	\$131.35

VI. Sherwood Fee Request

Attached as Exhibit H to the Declaration of the Receiver are the billing statements itemizing the amounts owed and the services performed by Sherwood from April 1, 2019 through June 30, 2019. As is shown from the billing statements, Sherwood performed 17.90 hours of services at an hourly rate of \$295.00 for a total of \$5,280.50. The services performed by Sherwood primarily revolved around communicating with the Receiver, transitioning matters to the Receiver, and providing information requested by the Receiver.

VII. Grobstein Teeple Fee Request

Attached as Exhibit A to the Declaration of Howard B. Grobstein are the billing statements itemizing the amounts owed and services performed by Grobstein Teeple from March 8, 2019 through September 30, 2019. Grobstein Teeple performed 10.9 hours of services for a total of \$3,540.50. Grobstein Teeple provided necessary and beneficial accounting services to the Receiver.

WHEREFORE, Diamond McCarthy, the Receiver, Sherwood, and Grobstein Teeple seek entry of an order granting this motion in all respects.

Dated: November 15, 2019

DIAMOND MCCARTHY, LLP

By: /s/Lesley Anne Hawes
 Lesley Anne Hawes
 Counsel for the Receiver